

STATE OF TEXAS §

COUNTY OF HIDALGO §

AMENDMENT #2

TO

**AGREEMENT BETWEEN THE COUNTY OF HIDALGO
AND NASSRI-WARREN GROUP ARCHITECTS, INC.
(Design and Construction of Memorial Park Phase I)
C17-184-06-27**

This **AMENDMENT** (the “Second Amendment”), is dated the 9th day of January, 2018, is between **NASSRI-WARREN GROUP ARCHITECTS, INC.**, a Texas corporation (the “Architect”) and **HIDALGO COUNTY, TEXAS** (the “Owner”), and amends the Agreement (as such term is defined below).

WHEREAS, Architect and Owner executed that certain Agreement (reference number C17-184-06-27) made as of the 27th day of June, 2017, in which the Architect agreed to provide professional services for the Owner’s project for the Design and Construction of Memorial Park Phase I (the “Project”) located at 107 Highway and Sunflower Road, Edinburg, Texas 78539 (the “Original Agreement”), and which was amended by that certain Amendment #1 to Agreement Between the County of Hidalgo and Nassri-Warren Group Architects, Inc. dated the 19th day of September, 2017 (as so amended, the “Agreement”);

WHEREAS, the original bids for a contractor for the Project came in higher than the parties anticipated, and the Owner has now opted to use a construction manager at risk (“CMAR”) process for the Project;

WHEREAS, the Architect and Owner have agreed to amend the Agreement as set forth herein to address the use of the CMAR process;

WHEREAS, these changes are not expected to increase the compensation due to the Architect pursuant to the Agreement; and

NOW THEREFORE, for and in consideration of the terms and provisions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Architect hereby agree as follows:

- 1. Change to CMAR Process.** Architect acknowledges and agrees that the Project will proceed with a CMAR. After the date of this Second Amendment, once the Owner contracts with a Construction Manager for the Project, the Architect shall consult with the Construction Manager and provide the Architect’s services under the Agreement in conjunction with the services of the Construction Manager.

2. **Amendments.** The Agreement is amended as follows:

a. Section 1.1 of AIA Document B101-2007 Standard Form of Agreement Between Owner and Architect (the "B101") of the Agreement is amended by adding the following new Sections 1.1.1 and 1.1.2 at the end thereof:

§ 1.1.1 The Owner's budget for the Cost of the Work, as defined in Section 6.1, plus compensation of the Construction Manager for Preconstruction Phase Services is One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00). For the avoidance of doubt, all compensation to the Construction Manager pursuant to the Owner's agreement to be entered into with the Construction Manager and referenced in Section 1.1.2 is included in the budgeted amount set forth in the first sentence of this Section 1.1.1, but the compensation to the Architect under this Agreement is not included.

§ 1.1.2 The Owner intends to retain a Construction Manager pursuant to the following form of agreement: AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Contractor, as modified by the Owner.

b. Sections 3.1.1 through 3.1.3 are of the B101 are amended to read as follows in their entirety:

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Construction Manager's Preconstruction Phase services, (4) for the performance of the Owner's

consultants, and (5) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.3.1 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

c. The following new Sections 3.1.8 through 3.1.9.3 are added at the end of Section 3.1 of the B101:

§ 3.1.8 In general, in performing services pursuant to this Agreement, Architect will coordinate and consult with the Construction Manager.

§ 3.1.9 Evaluation of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.1.9.1 Prior to the Owner's acceptance of the Guaranteed Maximum Price proposal or Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner on all communications related to substitution requests, clarifications, and interpretations.

§ 3.1.9.2 During one of the design phases, the Owner will receive a Guaranteed Maximum Price proposal or Control Estimate, as appropriate, from the Construction Manager. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.1.9.3 Upon authorization by the Owner, and subject to Section 4.3.1.8, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.1.9.4 If the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, unless the Owner either (1) gives written approval of an increase in the budget for the Cost of the Work (which may be by execution of the GMP Amendment) or (2) implements any other mutually acceptable alternative, then the Architect, in consultation with the Construction

Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget. Based on the Owner's decision with respect to such recommendations, the Architect shall incorporate the required modifications in the Drawings, Specifications or other documentation.

- d. Section 3.2.7 of the B101 is deleted and replaced with the following:

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager, and at the Owner's option the Owner, to review the Schematic Design Documents.

§ 3.2.8 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

- e. In Section 4.3.1 of the B101, the following new provision is added at the end of section 4.3.1.7 of the B101:

and

.8 Making revisions in Drawings, Specifications, and other documents resulting from substitutions included in the agreed to assumptions and clarifications contained in the GMP Amendment or Control Estimate.

- f. Section 6.1 of the B101 is amended to read as follows in its entirety:

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Managers' general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Architect, the compensation of the Construction Manager for Preconstruction Phase services, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

- g. Section 10.2 of the B101 is amended to read as follows in its entirety:

§ 10.2 Terms in this Agreement shall have the same meaning those in AIA Document A201-2007, General Conditions of the Contract for Construction as modified by the Owner and attached hereto as Exhibit "B" (and all references to the A201 in this Agreement are to such modified version). Unless the context otherwise requires, the term "Contractor" as used in this Agreement shall mean the Construction Manager.

h. Section 2.1.1 of AIA Document A201-2007 General Conditions of the Contract for Construction Between Owner and Architect as modified by Owner and attached to the Agreement as Exhibit B (the "A201") is amended to read as follows in its entirety:

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Commissioners Court of Owner, by majority vote, is the only representative of Owner, having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum or the Guaranteed Maximum Price (the "GMP"), or agree to an extension of the contractual completion date. The Commissioners Court shall designate, as appropriate, an authorized representative(s) to act on its behalf during the course of construction. In the event that an emergency changes the scope of the Work before the next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Commissioners Court's authorized representative(s) may approve construction changes that do not exceed ten thousand dollars (\$10,000.00) in increased costs. Any such changes shall be confirmed in writing between the Construction Manager and the Commissioner Court's authorized representative(s) and notice of such approved changes shall be given to the Commissioners Court at its next regular meeting. The Commissioners Court will act as soon as reasonably possible to avoid undue delays in the construction completion date.

i. Section 3.2.1 of the A201 is amended to read as follows in its entirety:

§ 3.2.1 Execution of the Contract and execution of the Guaranteed Maximum Price Amendment (the "GMP Amendment") by the Construction Manager are representations that the Construction Manager has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

j. Section 3.4.2.3 of the A201 is amended to read as follows in its entirety:

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent, including any claim for an increase in GMP related to such substitution; and

k. Sections 3.7.4 and 3.7.5 of the A201 are amended to read as follows in their entirety:

§ 3.7.4 Concealed or Unknown Conditions. If the Construction Manager encounters conditions at the site that are (1) subsurface or otherwise concealed

physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Construction Manager shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend to the Owner in writing, an equitable adjustment in the Contract Sum, GMP or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Construction Manager in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the GMP, Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or based on data provided to Construction Manager and by the Construction Manager's prior inspections, tests, reviews, and pre-construction services for the Project; or by the Construction Managers inspections, tests, reviews and pre-construction services that Construction Manager had the opportunity and obligation to make in connection with the Project but did not do so.

§ 3.7.5 If, in the course of the Work, the Construction Manager encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Construction Manager shall immediately suspend any operations that would affect them and shall notify the Owner and Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Construction Manager shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the GMP, Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

- I. Section 3.9.2 of the A201 is amended to read as follows in its entirety:

§ 3.9.2 The Construction Manager, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Architect, unless the Superintendent leaves the employment of the Construction Manager. No increase in Contract Time or GMP shall be allowed in the event the

Owner or Architect objects to any nominated superintendent. Such approval by the Owner shall not be unreasonably withheld.

m. Section 3.10.1 of the A201 is amended to read as follows in its entirety:

§ 3.10.1 The Construction Manager, promptly after execution of the GMP Amendment (if not included within the GMP Amendment), shall prepare and submit for the Owner's and Architect's review and approval a Construction Manager's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to Architect with Construction Manager's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets such a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Construction Manager shall submit to Architect and Owner for their review and approval a narrative description of the means and methods that Construction Manager intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Construction Manager shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Construction Manager shall not be entitled to an adjustment in the GMP or the schedule.

n. Section 3.10.2 of the A201 is amended to read as follows in its entirety:

§ 3.10.2 The Construction Manager shall prepare a submittal schedule, promptly after execution of the GMP Amendment (if not included within the GMP Amendment) and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's approval. The Architect's and Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Construction Manager's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Construction Manager fails to submit a submittal schedule, the Construction Manager shall not be entitled to any increase in GMP or extension of Contract Time based on the time required for review of submittals.

- o. Section 3.19.2 of the A201 is amended to read as follows in its entirety:

§3.19.2 If, after award of contract, the Construction Manager or one of the Construction Manager's Subcontractors or Suppliers determines that any of the products or systems specified will perform in a manner that will limit the Construction Manager's ability to satisfactorily perform the work or to honor the Warranty, the Construction Manager shall promptly notify the Architect, in writing, providing detailed substantiation for the Construction Manager's position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in GMP or Contract Sum, either upward or downward, if any, shall be accompanied by appropriate modification.

- p. In Article 7 of the A201, all references to the "Contract Sum" shall mean the Contract Sum and GMP, as applicable.

- q. In Section 8.1.1.2 of the A201, the reference to Section 3.1.1 of the A101 to which the A201 is attached, is instead to Section A.2.2 of the GMP Amendment.

- r. Section 8.2.1 of the A201 is amended to read as follows in its entirety:

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the GMP Amendment, the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

- s. Section 9.1.1 of the A201 is amended to read as follows in its entirety:

§ 9.1.1 Commitment of Current Revenues Only. In the event that, during any term hereof, the governing body of the Owner does not appropriate sufficient funds to meet the obligations of the Owner under this Agreement, then the Owner may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the Owner pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.

- t. At the end of Section 11.1.9 of the A201, the "11." before Section 11.2 is deleted and replaced with the following new Section 11.1.10:

§11.1.10 Workers' Compensation Insurance Coverage.

§11.1.10.1 Definitions:

.1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing

statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

.2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

.3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§11.1.10.2 The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

§11.1.10.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

§11.1.10.4 If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

§11.1.10.5 The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- .1** a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- .2** no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

§11.1.10.6 The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

§11.1.10.7 The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

§11.1.10.8 The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§11.1.10.9 The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- .1** provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- .2** provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- .3** provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- .4** obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- .5** retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

- .6 notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- .7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

§11.1.10.10 By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.1.10.11 The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

u. Sections 15.1.6 and 15.1.7 of the A201 are amended to read as follows in their entirety:

§ 15.1.6 Construction Manager shall not be entitled to claims for additional time and/or increase in the Contract Sum or GMP due to a problem or non-performance of a subcontractor.

§ 15.1.7 In the event the Construction Manager fails to achieve substantial completion by the date indicated in the GMP Amendment, plus any extension allowed in accordance with this Agreement, the Owner shall be entitled to liquidated damages in the amount as stated in Section A.2.2 of the GMP Amendment per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense be considered a penalty.

3. **Ratification.** Except as modified herein, all terms and conditions of the Agreement, as amended by this Amendment, remain in full force and effect, and

Architect and Owner ratify and confirm the terms and provisions of the Agreement, as amended by this Amendment.

[SIGNATURE PAGE FOLLOWS]

EXECUTED IN DUPLICATE ORIGINALS and effective as of the day and year first written above.

NASSRI-WARREN GROUP ARCHITECTS, INC.

By: _____
Laura N. Warren
AIA Principal and President

COUNTY OF HIDALGO

By: _____
Ramon Garcia, County Judge

ATTEST:

By: _____
Arturo Guajardo Jr., County Clerk

**APPROVED AS TO FORM FOR COUNTY:
ATLAS, HALL & RODRIGUEZ, LLP**

By: _____
Stephen L. Crain